
United States
Circuit Court of Appeals
For the Ninth Circuit

A. H. FAVOUR and A. G. BAKER,

Appellants,

vs.

HARRY W. HILL, Receiver of Intermountain
Building and Loan Association,

Appellee.

Opening Brief of Appellants

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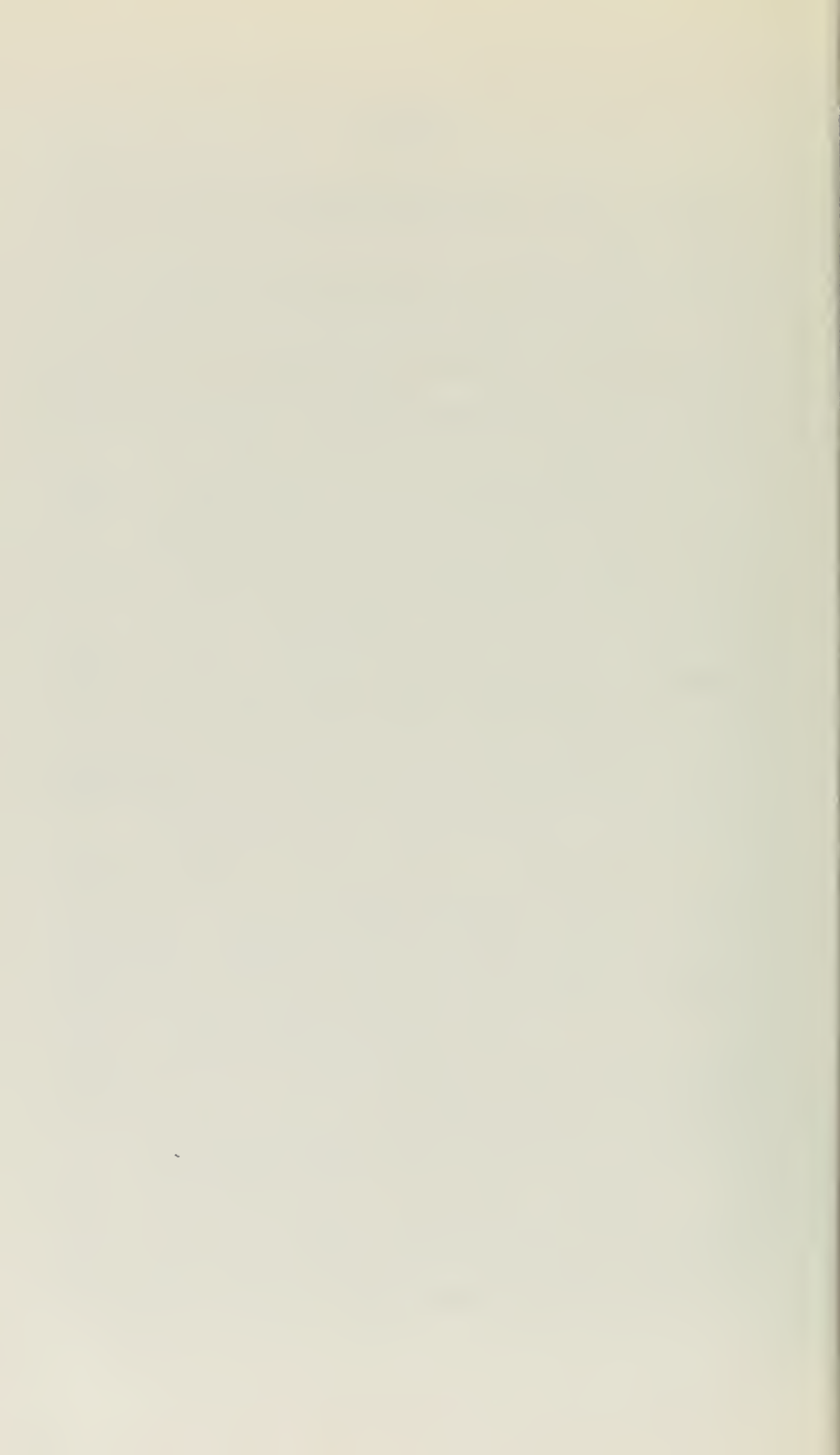
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Appellee.

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INTRODUCTION

This is an appeal from the denial by the United States District Court, Arizona, of a judgment creditor's claim filed by the appellants as subrogees and assignees with the Receiver, appellee. The claim had been established by judgment in the State Court for \$1,000.00 and costs against the Intermountain Association before appointment of the Receiver in

the United States Court. The Receiver disallowed it, on the ground it had been satisfied by sheriff sale, later held void. (T. R. 18). The District Court referred it and other objections to a Special Master on September 16, 1940. The Special Master found the undisputed facts, and concluded, although recognizing an inequity, that the claim must be rejected, because the sheriff's return showed payment in full by the purchaser of attached property, at execution sale upon the said judgment, notwithstanding that the sale was afterwards declared void, and the property, a mortgage, was restored to the Intermountain. The purchaser and appellants, assignees and also entitled by right of subrogation, have never received anything for the money paid. And the Intermountain and the Receiver have not paid the debt owed by them. The District Court overruled exceptions and confirmed the Report of the Special Master. The appeal was taken upon the ground that the facts found do not support the conclusion of law that a purported satisfaction under a void sale satisfies the unpaid debt of the Intermountain Receiver.

STATEMENT OF JURISDICTION

Jurisdiction of the United States District Court for the District of Arizona.

The jurisdiction of the District Court in the main case of Gallegos v. Intermountain, and in the juris-

diction to appoint the Receiver, is recognized by this Court in

Intermountain v. Gallegos (CCA 9th), 78 Fed. (2d) 972, *Certiorari denied in* 296, U. S. 80 L. Ed. 454.

These appellants, in accordance with notice given by the Receiver filed their judgment claim. The proceedings on this claim were ancillary to the main suit and the Court, having established jurisdiction in the main suit and receivership, had jurisdiction to act on this and other claims:

Carpenter v. Nor. Pac. R. Co., 75 Fed. 850. U. S. Code, Title 28, Par. 125; *Judicial Code*, Sec. 66.

Jurisdiction of the United States Circuit Court of Appeals.

This appeal is brought to review the final decision of the District Court in the Receivership proceedings, rejecting the said claim of appellants:

Jud. Code, Sec. 128 (A) First, amended. Land Title and Trust Co. v. Asphalt Co. (CCA 3rd), 127 Fed. 9.

On this case appeal was from an order of the District Court dismissing petition by a claimant. A Receiver had reported against allowance of the claim and the District Court confirmed the Report. The appellate Court reviewed the case.

Atlantic Trust Co. v. Dana (CCA 8th), 128 Fed. 217.

St. Louis Trust Co. v. Riley (CCA 8th), 70 Fed. 32.

STATEMENT OF PLEADINGS

About February 28, 1939, appellants, pursuant to notice, filed with the Receiver claim for \$1,064.06, the amount established by judgment obtained by Margaret Cobb, predecessor in interest of appellants, against the Intermountain Association. The Receiver disallowed the claim and the Court referred it and objections to a Special Master. (T. R. 3).

Pursuant to notice given by the Special Master, appellants served and mailed their verified Motion That the Master Approve the Judgment Claim, with memorandum of authorities (T. R. 7). No answer was filed by the Receiver. The ground of the Motion was, as set out in the Introduction above, that the Receiver erred in concluding that the sheriff's return on a void sale constituted a final and unalterable satisfaction which excused payment of the debt.

While recognizing the inequity, the Special Master in his report stated his conclusion of law to be that the satisfaction entered on the void sale nevertheless satisfied the claim, (T. R. 20), and the Receiver should not pay this debt.

Exceptions to this rejection by the Special Master were filed by appellants and, after a hearing, the Exceptions were overruled. (T. R. 21-26). A petition for Rehearing was filed and overruled. (T. R. 27 and 30).

The sole ground of this appeal is that the facts found by the Special Master and adopted by the

Court do not support the Conclusion of Law that the return of satisfaction, made upon the void sale, satisfied the judgment claim of appellants as subrogees and absolved the Receiver from payment of the debt of the Intermountain Association. And the only pleadings or records necessary for the purpose of this review are the Report of Special Master (T. R. 10) and the Exceptions and proceedings thereafter.

STATEMENT OF FACTS

All the essential facts are found and stated in the Report of Special Master (T. R. 10) and approved and confirmed by the Court. (T. R. 26). They are briefly:

Prior to January, 1934, Margaret Cobb had a matured certificate for \$1000 in the Intermountain Association, (T. R. 11 and 18) having paid all instalments; but she could not get payment. She brought suit against the Association in that month in the Superior Court of Yavapai County, Arizona. Defendant appeared and answered, and after trial, judgment was entered for her on April 18, 1934, (T. R. 18) prior to appointment of Receiver of the Intermountain in the Federal Court. The plaintiff had at the time of bringing suit had an attachment levied on a recorded mortgage in which the Association was mortgagee and Thomas Short and wife were mortgagors. (T. R. 11). The judgment foreclosed

the attachment, execution issued April 18, 1934, and at the execution sale R. O. Barrett purchased (T. R. 12), a statute of Arizona providing that levy may be made on any interest in property, legal or equitable. The sheriff's return of sale showed payment in full. (T. R. 13). Cobb, in addition, gave Barrett a written assignment of the judgment and of all her interest. (T. R. 15). They both thereafter gave similar assignments to Favour and Baker, who paid the full amount of \$1064.06. (T. R. 19 and 21).

Later the Receiver, denying the validity of the attachment demanded payment from Shorts and they interpleaded the Receiver and these appellants in the Superior Court (T. R. 16). The lower court upheld the original Cobb judgment and sale. The Receiver appealed and the Arizona Supreme Court held that attachment of a mortgage could not be made and held void the execution and sale, (T. R. 16), thereby restoring to the Receiver all rights in the mortgage; the Court stated, however, that the judgment establishing the debt was "unimpeachable" (Hill v. Favour, 84 Pac. (2nd) 589). (T. R. 19). After this decision the Superior Court, in February, 1939, corrected the judgment and record to set aside as void the attachment, execution and sale, in conformity with that opinion. (T. R. 16).

The appellants then promptly filed within the time permitted their claim based upon the Cobb

judgment as it converted the claim and established the debt and the amount. (T. R. 18). This was filed with the Receiver as directed, in this United States Court case, as a judgment creditor claim.

The Receiver, as set out in the Statement of Pleadings above, filed report in or about July, 1940, rejecting the claim, as having been satisfied by the sheriff's return on the void sale. (T. R. 1). The Court referred it to a Special Master. Written notice was mailed by the Special Master that any persons having objections to the Receiver's disallowance might appear or in lieu of a personal appearance such persons might submit their written objections or a statement of their contentions by mail. Appellants accordingly mailed their Motion That Master Approve the Claim (T. R. 7). In addition appearance was later made before the Master with the Receiver represented, and offer was made by appellants to confirm by documentary or other testimony the statements in the sworn Statements, if the Master considered any necessary. But there was no dispute of the facts, and the Report of the Master found the undisputed facts. Exceptions were filed by appellants to the conclusion of law of the Master that the satisfaction entered on the void sale satisfied the claim (T. R. 20). The Court overruled the exceptions and confirmed the Report.

ABSTRACT OF THE CASE

The Court, as above mentioned, overruled appellants' exceptions to the conclusion of law in the Report of the Special Master, and approved and confirmed the Facts and Conclusions therein as his own. So the only issue on the appeal is whether, based upon the Facts found by the Master, the satisfaction reported on a void sale is notwithstanding the invalidity a conclusive satisfaction of this claim and of the unpaid debt of the Receiver; that is, does this conclusion of law follow from the undisputed facts.

Appellee appears to stand on the proposition that if a satisfaction is returned by a sheriff, it is conclusive, and the fact the sale was void, or any other evidence to show it is erroneous and inequitable, cannot be considered; and the judgment debtor can thus avoid payment of his debt. No authorities have ever yet been cited by appellee to support his contention.

Appellants stand on the proposition that on the undisputed facts here, the satisfaction which was entered upon the sale, afterwards declared void, is also void; and as the judgment debtor or its Receiver had the property, never in fact sold, restored to him, he still owes the debt and cannot claim such a satisfaction discharges him. We stand on this appeal upon the words quoted by the United States Supreme Court in *Davis v. Gaines*, 104 U. S. 386, that nothing could be more unjust than to permit a debtor to

recover back his property because the sale is irregular, and yet allow him to profit thereby to discharge his debt.

SPECIFICATION OF ERROR No. 1:

The Court erred in overruling (T. R. 25) appellants exceptions and in confirming that part of the Report of Special Master in which he concluded as a matter of law upon the facts found, that this judgment claim was conclusively satisfied by the sheriff's sale and return (T. R. 20); for the reasons that, as set out in the Exceptions to said Report (T. R. 22):

(1) The sale was afterwards declared void; and as a matter of law and equity, when property is sold under execution and the purchaser pays and a satisfaction is entered, but the sale proves to be invalid, the satisfaction becomes null and should be regarded as of no force and effect; there is in law no satisfaction and the judgment stands and the purchaser or his successors are subrogated to all rights of the judgment creditor against the defendant.

(2) The disallowance of this claim will result in inequity because, as stated by the Special Master (T. R. 17 and 18), the Intermountain, defendant, was paid in full for the Certificate by Margaret Cobb, and no payment whatever has ever been returned or made by it or its Receiver to Cobb or her succes-

sors including appellants who paid the sum of \$1064.06, the full amount under the judgment and bid on the void sale, and who have thereby paid under the “coercive process” of the law the debt of the Receiver and will be the losers.

SPECIFICATION OF ERROR No. 2:

The Court erred in failing to render judgment for the appellants herein, approving their judgment claim filed, for the reasons stated in the above specification.

SUMMARY OF ARGUMENT

A. The Special Master found and stated the Facts in his Report. No exception was made to these Findings of Fact. The Court in its order overruling exceptions of appellants to the Conclusion of Law in the Report, made no different findings, as is required when there are disputed matters in such a Report, on the Facts. The Findings of Fact as made by the Special Master and confirmed by the Court are final and conclusive.

B. But where Findings of Fact are conclusive, the Conclusions of Law are not conclusive, and appeal can be made, as in this case, upon the ground that the Conclusions of law are not supported by the undisputed facts.

C. The finding and conclusion of the Master confirmed by the Court, that the judgment in *Cobb v Intermountain Association* in the State Court,

established the existence, amount and validity of the claim of appellants as against the Receiver is correct and cannot be disputed by either party.

D. But the Conclusion of Law (T. R. 20) that the sheriff's return in said Cobb case showing full payment of the amount of judgment bid on execution sale, afterwards declared void, satisfied the claim and the debt of the Receiver, is erroneous and inequitable. The Receiver has paid nothing, but the appellants advanced the money and paid Margaret Cobb. Appellants never received the property they paid for, but it was restored to the Receiver because the sale was declared void. Appellants are therefore in law and equity subrogated to the right to receive from the Receiver the debt owed. The United States Supreme Court statement in the Davis case above quoted is exactly applicable: Nothing could be more unjust than to let the debtor get his property back, and yet let his debt be discharged by the void sale.

ARGUMENT

A. The Special Master found and stated the Facts in this Report. No exception was made to these Findings of Fact. The Court in its order overruling exceptions of appellants to the Conclusion of Law in the Report, made no different findings, as is required when there are disputed matters in such a Report, on the Facts. The Findings of Fact as made by the Special Master and confirmed by the Court are final and conclusive.

The issue on this appeal is simply whether the conclusion of law and decision rejecting the claim on the ground that the satisfaction on a void sale prevents approval are supported by these findings of fact.

If the Court had considered there was any dispute of fact in the Report, specific findings thereon should have been made by the Court. The action of the Court in approving without making any specific findings is further clear proof if any were necessary that there was no disputed fact. Otherwise the case might be remanded:

O'Brien, 1937 Cumulative Supplement Manual Federal Appellate Procedure, page 20.
Wyant v. Caldwell, 67 Fed. (2nd) 374.

B. But where Findings of Fact are conclusive, the Conclusions of Law are not conclusive, and appeal can be made, as in this case, upon the ground that the Conclusions of law are not supported by the undisputed facts.

This proposition is beyond dispute, and the question for review here is whether on the undisputed facts there is an error of Law in the conclusion and decision rejecting the claim on the ground stated.

Allen v St. Louis Bank, 120 U. S. 20; 30 L. Ed. 537.

Roberts v Benjamin, 124 U. S. 64; 31 L. Ed. 336.

Edenborn v Sim (CCA 2nd) 206 Fed. 275.

D. L. & W. Co. v. Caboni, 223 Fed. 631.

White v Ball Co., 223 Fed. 619.

Aronstam v All Russian Union, 270 Fed. 460.

David Lupton Co. v Auto Club, 225 U. S.; 56 L. Ed. 1177.

American Pipe v Westchester, 292 Fed. 947.

Budd v Wilson, 7 Fed. (2d) 747.

C. The finding and conclusion of the Master confirmed by the Court, that the judgment in Cobb v. Intermountain Association in the State Court, established the existence, amount and validity of the claim of appellants as against the Receiver is correct and cannot be disputed by either party.

This proposition, and the finding and conclusion of the Special Master, and adopted by the Court (T. R. 19), that the judgment stands conclusive as it established the right to recover the amount sued for, is amply supported.

Pine Lake v. LaFayette, 53 Fed. 853:

This case held that a judgment, obtained even after receiver was appointed, establishes the claim.

New York Life v. Bangs, 103 U. S., 26 L. Ed. 608:

The contract is merged in the judgment and concludes all matters in relation to the contract.

Estes v. Estes, 24 Fed. (2d) 756:

The judgment is conclusive as to the existence and amount of the claim.

International Great Northern v. Clerk, 4 Fed. (2d) 19

Dillingham v. Hawk, 60 Fed. 495

Penn. Steel Co. v. Street Railroad, 161 Fed. 787

Pringle v. Woolworth, 90 N. Y. 510:

The judgment versus the company established as versus the receiver the amount of the debt or claim of the plaintiff.

D. But the Conclusion of Law (T. R. 20) that the sheriff's return in said Cobb case, showing full payment of the amount of judgment bid on execution sale, afterwards declared void, satisfied the claim and the debt of the Receiver, is erroneous and inequitable. The Receiver has paid nothing, but the appellants advanced the money and paid Margaret Cobb. Appellants never received the property they paid for, but it was restored to the Receiver because the sale was declared void. Appellants are therefore in law and equity subrogated to the right to receive from the Receiver the debt owed. The United States Supreme Court statement in the Davis case above quoted is exactly applicable: Nothing could be more unjust than to let the debtor get his property back, and yet let his debt be discharged by the void sale.

The conclusion, that the payment of the full sum by a third party on a void sale, satisfied the claim and the debt of Intermountain, is not supported by the facts found and is erroneous and inequitable. The Special Master (T. R. 21) recognized and reported the inequity.

The rule of law applicable is that the debt of a party whose property is sold at a void execution sale, and it is recovered by him, is not discharged. But the purchaser, or those in his place and stead, on the void sale, regardless of whether he is the judgment creditor or not, is subrogated to the right of the creditor. A purported satisfaction is, in law, no satisfaction, and judgment stands.

In the case at bar the debtor, Intermountain, through its Receiver, recovered back and retained

what was sold at the execution sale, afterwards declared void; the said debtor (Receiver) *has never paid the debt* established by the judgment, and seeks to profit by claiming *that the void sale discharged his debt* (T. R. 18 and 21). The rejection of the judgment claim if sustained would cancel the debt, and allow the Receiver to discharge the indebtedness without any payment back of money paid by Cobb to the Intermountain. In the case of *Davis v. Gaines*, 104 U. S. 386, 26 L. Ed 764, the debtor sought to have his debt discharged by a void sale. The Court confirmed the principle which should govern this case, by approval of the following:

“Nothing could be more unjust than to permit a debtor to recover back his property because the sale is irregular, and yet allow him to profit by that irregular sale to discharge his debt.”

Other courts have similarly refused to allow such an unjust result to be sanctioned:

In *Massie v. McKee*, (*Tex.*) 56 S. W. 119, plaintiff had bid in the full amount for land which was found not to belong to the judgment debtor. The return of the Sheriff showed satisfaction, and the plaintiff, purchaser, moved the lower court to vacate the satisfaction and this was refused. The appellate court stated that the lower court erred, that it would be inequitable to hold that the levy had the effect to satisfy the debt.

Townsend v. Smith, 20 *Tex.* 465, 70 *Am. Dec.* 400,

states the same principle. The plaintiff recovered a judgment and bid in land, which had to be given up. He then sued on the judgment, which was objected to. The appellate court stated that the sale and purchase for the full amount was not a satisfaction, if no title passed. That the judgment remains in full force. That "It does not lie with defendant to say the judgment was satisfied when by reason of nullity he recovered back the property sold." "A void proceeding cannot operate as a satisfaction of a judgment."

In *Mahrhoff v. Diffenbacher* (*Ind.*), 31 *N. E.* 41, the plaintiff purchased at the sale for the full amount and satisfaction was entered. The sale was void. The appellate court said it makes no difference whether purchaser is the judgment creditor or not, the purchaser received no value on the sale. "To deny relief . . . would be repugnant to established principles of equity and justice."

Where a sale on execution under a judgment is afterwards found void, any satisfaction entered is also void. This is the well settled rule. In *Smith v. Reed*, 52 *Cal.*, 17 *Pac. St. Rep.* 345, the full amount was bid and satisfaction entered. The execution and sale were void. The Court states that the purchaser acquired nothing by the attempted sale. That not only the execution and sale, but also the apparent satisfaction, ought to be set aside as void.

In *Copeland v. Colorado Bank* (*Colo.*), 59 *Pac.* 70

there had been a satisfaction on a sale, and the latter being void the purchaser requested vacating of the satisfaction. The appellate court states: The levy of this execution was therefore void. The subsequent proceedings depended for their validity upon the levy, and, as it was void, so were they. There was in law no levy, no sale, and no satisfaction.

In *Merquire v. O'Donnell*, (Cal.), 72 Pac. 337, there was a sale and satisfaction. The sale was afterwards held void in another suit. Motion to set aside the satisfaction was denied. The appellate court said the denial should be reversed. "It is certainly necessary and consonant with the principles of equity that a party should have relief in cases where the execution and sale are void."

In *Knaak v. Brown*, 212 N. W. 431, 51 A. L. R. 241, the court states: "In fact, an entry of satisfaction is but a receipt, and like a receipt may be explained or avoided by satisfactory evidence that the payment was not in fact made, or though made satisfaction has become inoperative by reversal of judgment, vacating of sale, or any other cause rendering it inequitable for the defendant to avail himself of the entry of satisfaction.

In *Farmer and Sons v. Sasseen* (Iowa), 18 N. W. 714, the court states "Where the sale has been judicially set aside . . . it necessarily follows that the satisfaction of the judgment which followed the sale,

and was entered of record by reason thereof, should be set aside.”

In *Kercheval v. Lamar*, 68 *Ind.* 442, quoted in Note to 51 A. L. R., p. 258g, the court said: If the appellants got nothing by their purchase, by reason of the defective proceeding, their judgment is not satisfied in equity, and they are entitled to have the levy, sale, deed and entry of satisfaction set aside and their judgment reinvigorated and declared in full force.”

The purchase money for the mortgage bought at the void sale, and paid by appellants, was received by Cobb, being full payment (T. R. 20), as creditor of the Intermountain. And appellants were subrogated to the rights Cobb had originally; that gave them the right as the judgment creditor to file claim and collect from the Receiver. The assignments (T. R. 15) of Cobb and Barrett simply were confirmatory of the subrogation allowed in law and equity. The great weight of authority including the U. S. Supreme Court in *Davis v. Gaines*, establishes that the purchaser or his successors at a void sale are subrogated to the rights of the judgment creditor to recover from the judgment debtor:

A purchaser in good faith at a void execution sale is not a volunteer, and is subrogated to

the rights of creditors to the payment of whom the purchase money was applied.

60 C. J. 799.

Subrogation is the substitution of another person in the place of a creditor so that the person in whose favor it is exercised succeeds to the right of the creditor in relation to the debt . . . It rests upon the maxim that no one shall be enriched by another's loss, and may be invoked wherever justice demands its application, in opposition to the technical rules of law which liberate securities with the extinguishment of the original debt.

Wilson v. Todd (Ind.), 129 A. L. R. 195 and 196.

Purchasers at a void judicial sale are entitled to be subrogated to the rights of the creditors whose claims were discharged by the proceeds of such sale. The maxim of caveat emptor does not apply to a judicial sale where the defect in the title of a purchaser is occasioned by some irregularity in the proceedings depriving them of the power to divest the title held by the defendant.

Bond v. Montgomery (Ark.), 20 S. W. 525; 35 Am. St. Rep. 119.

To the same effect are:

Liverman v. Lee (Miss.) 38 So. 658, cited in 129 A. L. R. 203.

Bruce v. Spears (Miss.), 187 So. 756, cited in 129 A. L. R. 203.

Ruling Case Law also states the principle recognized and applicable to our case:

As already seen, while the right to subrogation will not arise in favor of a mere volunteer, it exists in all cases where the payment is

avored by public policy. It is upon this principle that purchasers at void judicial sales are protected, the reason in all such cases being that public policy demands that such purchasers should be encouraged by giving equitable relief to purchasers whose money has been honestly applied to the purposes to which the property has been devoted, although on account of the insufficiency of the proceedings they have failed to obtain title. It is established by the great weight of authority that where purchase money, paid over on a judicial sale that turns out to be void, is applied to the extinguishment of claims that were enforceable against the assets of an estate and for the payment of which the property might have been sold, the purchaser, if he purchased in good faith and without knowledge of the invalidity of the sale is entitled to be subrogated to the rights of the creditors whose claims were so discharged, against the property sold or its proceeds.

25 *R. C. L.*, p. 1356, citing among other cases, *Davis v. Gaines*, 104 *U. S.*

Also:

The purchaser at a void execution sale is subrogated to all the rights of the execution creditor bringing about the sale. His equity rests, not upon the want of knowledge as to title in the property, but on the ground of his having discharged a judgment against the defendant, for which he stood chargeable, by a purchase, made under the coercive process of the law, and therefore he has an equitable claim to reimbursement by the defendant in execution.

25 *R. C. L.*, p. 1360.

CONCLUSION

The facts found and confirmed by the Court show that the debt owed Cobb by the Intermountain (Re-

ceiver as successor) was paid in full on the execution sale. Appellants paid this money, but have received nothing, and the Receiver has paid nothing on the debt.

The cases above cited agree with the clear statement of the principle applicable, as declared by *Davis v. Gaines*, Supreme Court decision, which quotes with approval:

“Nothing could be more unjust than to permit a debtor to recover back his property because the sale is irregular, and yet allow him to profit by that irregular sale to discharge his debt.”

It is respectfully submitted that following this controlling case, as well as the great weight of other authority as stated in the *Davis* case, the order of the lower court rejecting the judgment claim should be reversed, and appellant's claim allowed as a judgment claim in the sum of \$1064.06, or the case remanded with instructions to allow it, or such other order be made as this Court deems equitable to appellants.

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